

THE ORGANISATION OF CIVIL JUSTICE IN ITALY

Italian Business Summit 2013

Att. Silvia Giannini

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GENEVA GROUP INTERNATIONAL



GIANNINI STUDIO LEGALE

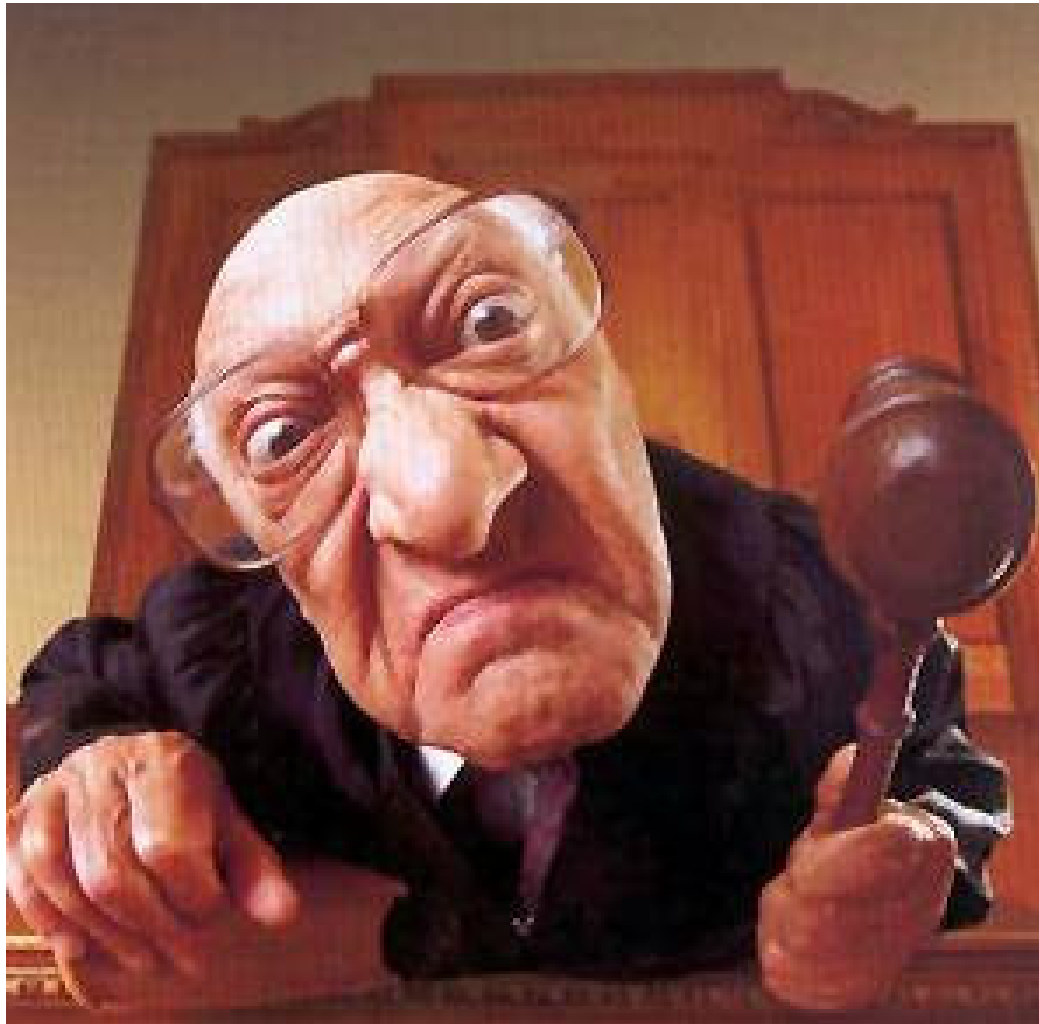


THE ITALIAN CONSTITUTION
GUARANTEES THE INDEPENDENCE
OF THE JUDICIARY
FROM INTERFERENCE BY
ANY OTHER STATE POWER
IN ASSESSING FACTS,
INTERPRETING THE LAW
AND PASSING
JUDGEMENTS



Civil Courts decide questions concerning application of the judicial network in civil and commercial matters:

- **civil law, including family law**
- **the law on consumer protection**

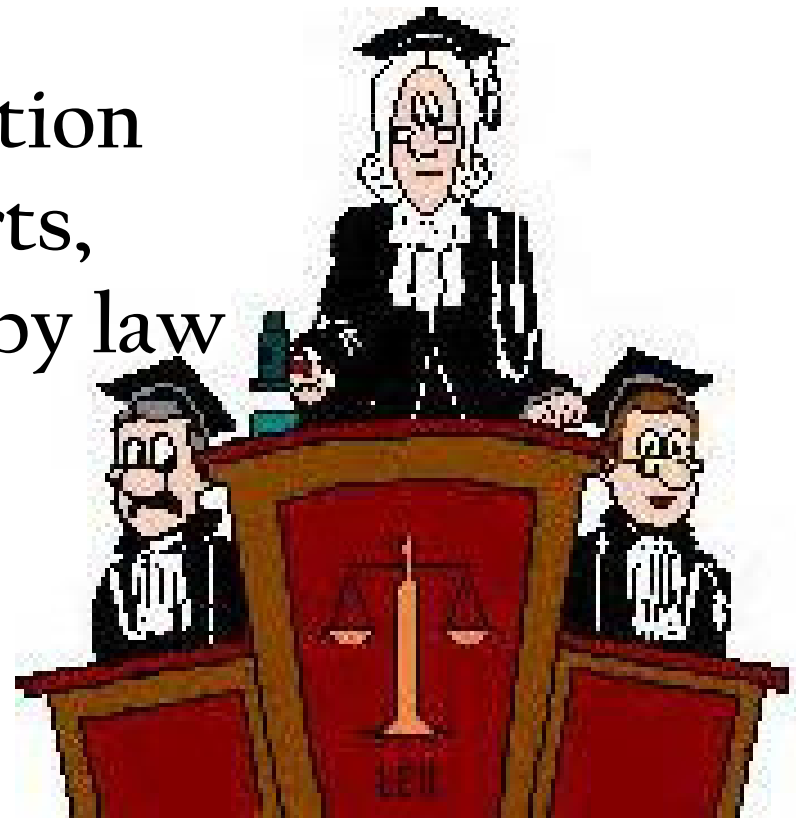


“Ordinary” Judges—to become one:

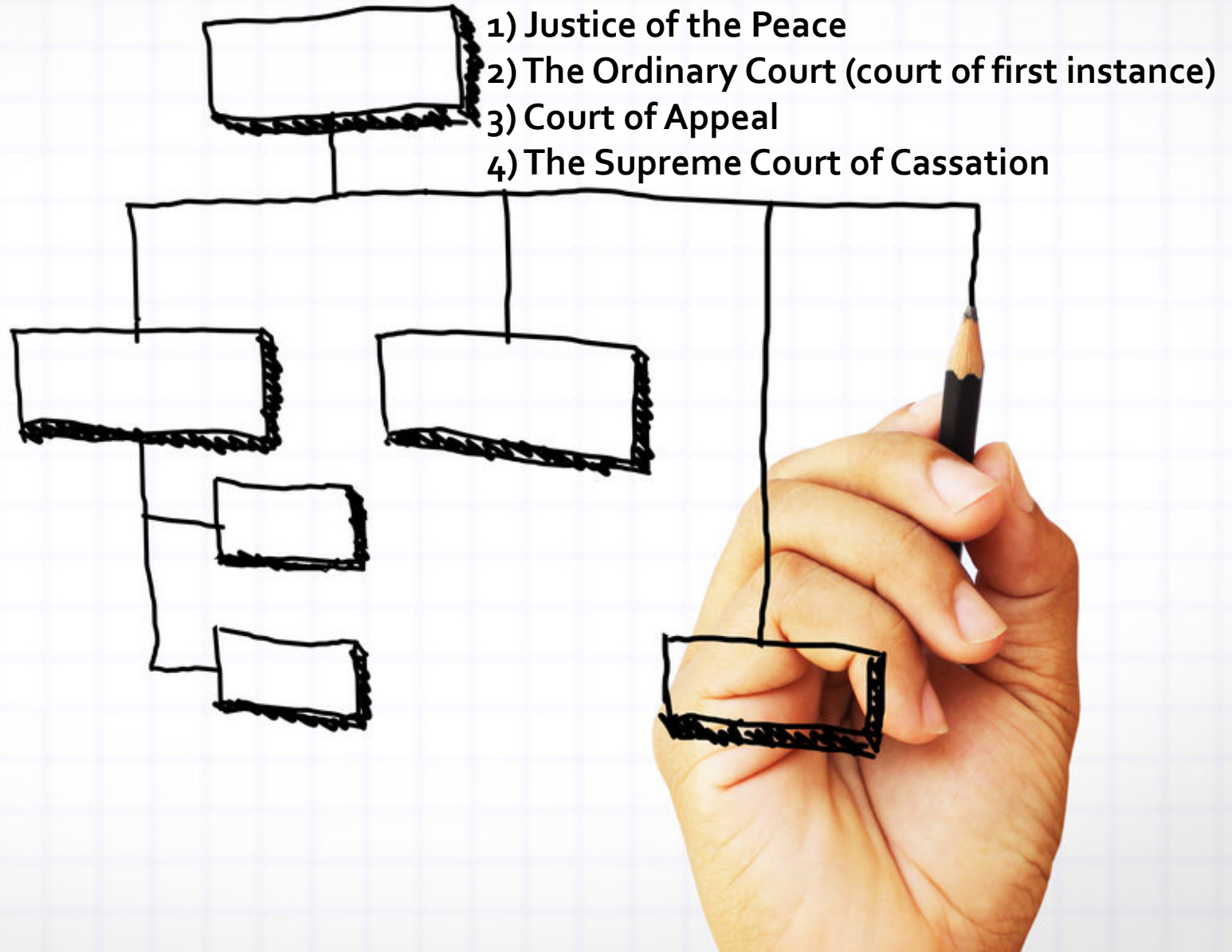
- candidates take part in competitive examinations, passing various levels;
 - training period, then duties assigned

Judges of the first level rule individually, except in certain cases which require a panel of judges:

- The Courts of Appeal
- The Supreme Court of Cassation
- The so-called Ordinary Courts, in certain cases, as required by law



How Italian Civil Courts are organised:



Justice of the Peace (Giudice di Pace):

- honorary magistrate, not a career judge
- nominated by Superior Council of Justice on the basis of fixed requirement
- Term of office is 4 years, renewable once
- A monocratic judge, rules independently



The Justice of the Peace is responsible for:

- chattels / personal property up to € 5.000,00
- damage caused by vehicles / boats up to € 20.000,00
- disputes of any value: use of facilities in jointly owned buildings
- if value is not greater than € 1.100,00, *pro se* representation is permitted; otherwise, a lawyer is required

The Justice of the Peace decides cases based on law or principles of general equity. Regardless, judges favour conciliation between the parties—usually, this is the result

Appeals from J of the P:

- to the Ordinary Court
- if can't be appealed (as with equity), only recourse is appeal to the Supreme Court of Cassation



The Ordinary Court (Tribunale Ordinario)

- in every city
- judge preside independently or serve on a panel of 3
- court of first instance
- appeals court from J of the P

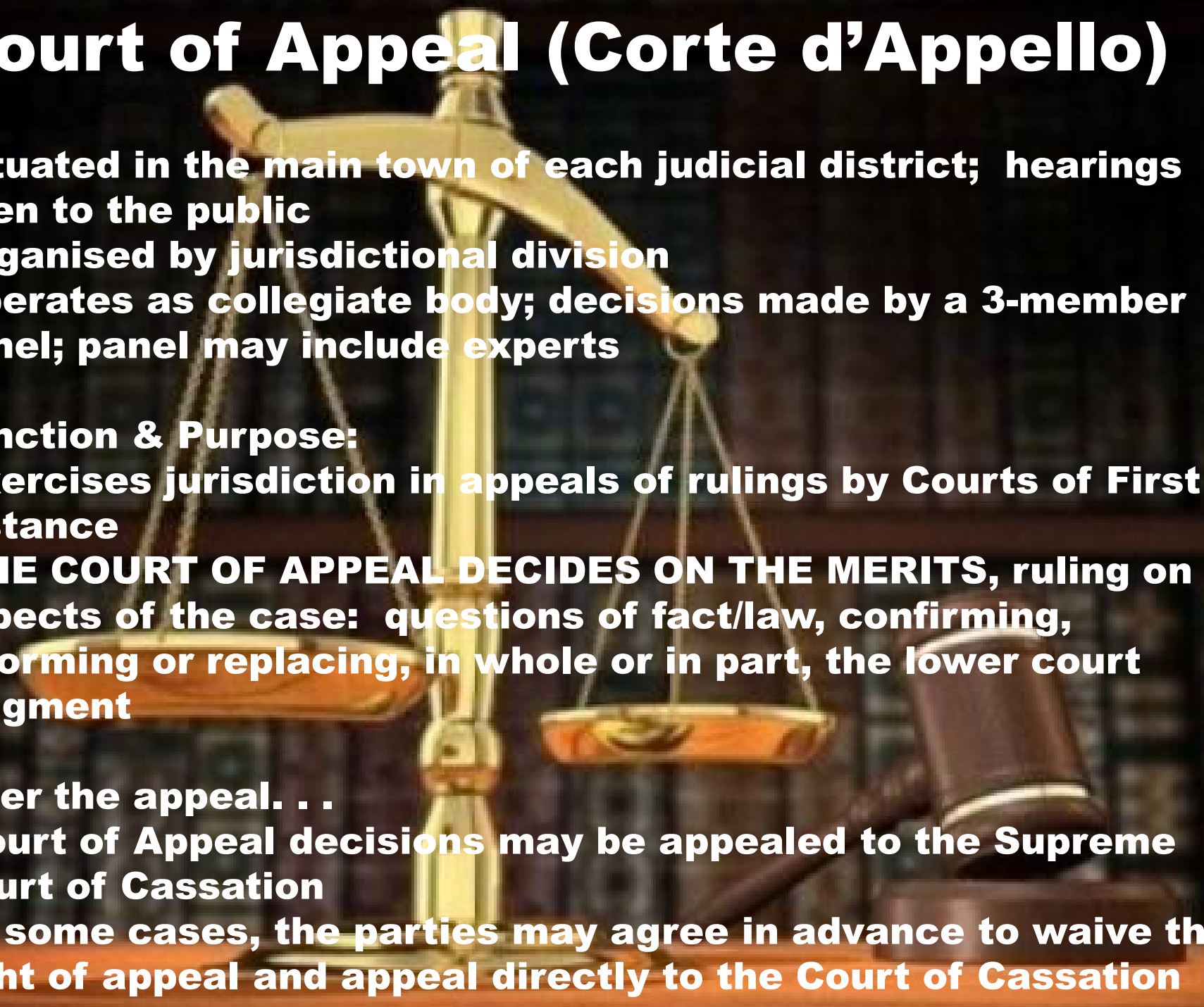
...what it does

- *responsible for all matters beyond the jurisdiction of J of the P*
- *parties must be represented by counsel*
- *decisions of Ordinary Courts may be appealed to the Court of Appeals or, as provided by law, appealed directly to the Supreme Court*



ADR is an absolute requirement
before an appeal to the Ordinary Court

Court of Appeal (Corte d'Appello)



- **situated in the main town of each judicial district; hearings open to the public**
- **organised by jurisdictional division**
- **operates as collegiate body; decisions made by a 3-member panel; panel may include experts**

Function & Purpose:

- **exercises jurisdiction in appeals of rulings by Courts of First Instance**
- **THE COURT OF APPEAL DECIDES ON THE MERITS, ruling on all aspects of the case: questions of fact/law, confirming, reforming or replacing, in whole or in part, the lower court judgment**

After the appeal. . .

- **Court of Appeal decisions may be appealed to the Supreme Court of Cassation**
- **In some cases, the parties may agree in advance to waive their right of appeal and appeal directly to the Court of Cassation**



The Supreme Court of Cassation
(La Suprema Corte di Cassazione)

“La Suprema Corte di Cassazione, quale organo supremo della giustizia, assicura l’esatta osservanza e l’uniforme interpretazione della legge, l’unità del diritto oggettivo nazionale, il rispetto dei limiti delle diverse giurisdizioni; regola i conflitti di competenza e di attribuzione ed adempie agli altri compiti ad essa conferiti dalla legge”.

Art. 65 dell’Ordinamento Giudiziario (decreto reale del 30 gennaio 1942, n.12)

The Supreme Court of Cassation, the highest judicial institution, assures the correct observance and uniform interpretation of the law, the unity of the national objective of the law, compliance with the limits of the various jurisdictions, decides jurisdictional issues, and fulfills other duties conferred on it by law.

Article 65 of the Judiciary Court System (Royal Decree n. 12, 30 January 1942)

The Supreme Court of Cassation

Organization and Operation

- Situated in the Palace of Justice in Rome, operates as a collegiate body, organized into many divisions
- Each ruling is made by a first president, a division president and at least 2 judges
- Usually a 5-member panel decides, or in joint session for jurisdictional disputes / Constitutional questions, or if prior decisions have resulted in a dichotomy in the law
- in joint session are made by a 9-member panel



Function and Purpose

- Is the court of last resort; it is the ultimate judge
- Holds jurisdiction over the entire territory of the Republic
- Appeals to the Court of Cassation may be raised on a point of law
- sole purpose is to ensure that the law was applied correctly by the lower Court

After the appeal. . .

- If an appeal is granted, the Supreme Court overrules the lower court decision, transfers the matter to the appropriate court, orders a new trial
- The Lower Court must strictly observe the principle of law in the Supreme Court decision
- Supreme Court judgments are not binding on other judges in similar cases. However, they carry precedential value, represent the interpretation of the law, and are clearly persuasive



So on Monday
you can all
represent your clients
in Italian courts!!!

Thank you